



**THE ATTORNEY GENERAL  
OF TEXAS**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

**AUSTIN, TEXAS 78711**

July 26, 1972

Hon. Clyde Whiteside  
Chairman  
Board of Pardons and Paroles  
Room 501, John H. Reagan Bldg.  
Austin, Texas 78701

Opinion No. M-1178

Re: Possible retroactive  
application of Morrissey  
v. Brewer with regard to  
on sight hearings in  
Parole Revocation pro-  
ceedings.

Dear Mr. Whiteside:

This is in response to your recent letter which, except for formal parts, is quoted in its entirety:

"The Board of Pardons and Paroles would like your official legal opinion as to whether or not this Board is required to have a retroactive preliminary parole revocation hearing on Texas cases where parole has been officially revoked prior to the Morrissey Decision. Said decision being styled John J. Morrissey and G. Donald Booher vs. Lou B. Brewer, Warden, et al., as handed down June 29, 1972. The opinion being delivered by Chief Justice Burger, United States Supreme Court."

The following pertinent portions of the Morrissey Opinion are set forth:

"We begin with the proposition that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations."

\* \* \*

"We now turn to the nature of the process that is due, bearing in mind that the interest of both State and parolee will be furthered by an effective but informal hearing. In analyzing what is due, we see two important stages in the typical process of parole revocation.

" . . . The first stage occurs when the parolee is arrested and detained, usually at the direction of his parole officer. The second occurs when parole is formally revoked.

" . . .

"With respect to the preliminary hearing before this officer, the parolee should be given notice that the hearing will take place and that its purpose is to determine whether there is probable cause to believe he has committed a parole violation.

" . . .

"There must also be an opportunity for a hearing, if it is desired by the parolee, prior to the final decision on revocation by the parole authority. This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation.

" . . .

"We do not reach or decide the question whether the parolee is entitled to the assistance of retained counsel or to appointed counsel if he is indigent.

"We have no thought to create an inflexible structure for parole revocation procedures. The few basic requirements set out above, which are applicable to future revocations of parole, should not impose a great burden on any State's parole system." (Emphasis added.)

In view of the prior history of the rule announced, its purpose and effect, and the effect on the administration of justice of a retrospective application of such a rule, and the further doctrine that the Supreme Court is neither required to apply, nor prohibited from applying, a decision retrospectively, we have concluded that the preliminary parole revocation hearing

requirement will be given only prospective effect. Linkletter v. Walker, 381 U.S. 618, 85 S.Ct. 1731 (1965).

In view of the provision last quoted above and the foregoing considerations, it is the opinion of this office that the requirements of Morrissey v. Brewer, supra, are to be prospectively applied, and it is not necessary for the Board to grant on-sight hearings to persons whose paroles were revoked prior to June 29, 1972.

SUMMARY

The procedural rules established in Morrissey v. Brewer, \_\_\_ U.S. \_\_\_, 40 L.W. 5016, are only prospective in application, commencing June 29, 1972, and are therefore not applicable to revocation prior to June 29, 1972.

Respectfully submitted,



CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by Howard M. Fender  
Assistant Attorney General

APPROVED  
OPINION COMMITTED:

Kerns Taylor, Chairman  
W. E. Allen, Co-Chairman

Glenn Brown  
Lang Baker  
Bob Lattimore  
Jack Sparks

SAMUEL D. McDANIEL  
Staff Legal Assistant

ALFRED WALKER  
Executive Assistant

NOLA WHITE  
First Assistant